

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
Various Subsidiaries and Affiliates of	)	File Nos. 0000013318
GEOTEK COMMUNICATIONS, INC.,	)	0000013319
Debtor-In-Possession,	)	0000013321
Assignors,	)	0000013499
	)	0000013499
and	)	0000013504
	)	0000014139
WILMINGTON TRUST COMPANY or	)	911823
HUGHES ELECTRONICS CORPORATION,	)	911825
Assignees,	)	911827
)	
)	
In re Applications of)	
)	
WILMINGTON TRUST COMPANY or	)	File Nos. 911830
HUGHES ELECTRONICS CORPORATION,	)	911831
Assignors,	)	911832
	)	911833
and)	
)	
FCI 900, INC.)	
Assignee,)	
)	
)	
For Consent to Assignment of 900 MHz)	
Specialized Mobile Radio Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: January 14, 2000

Released: January 14, 2000

By the Chief, Wireless Telecommunications Bureau:

TABLE OF CONTENTS

	<u>Para.</u>
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	6
A. Statutory Authority	7
B. Qualifications	10
1. Qualifications of Geotek to Assign the Licenses to the Creditors	11
2. Qualification of the Creditors to Hold the Licenses	16
3. Qualifications of Nextel to Hold the Licenses	19
C. Public Interest Impacts	12
1. Analysis of Potential Public Interest Harms	12
a. Competitive Assessment – Consent Decree Markets	12
b. Competitive Assessment – Non-Consent Decree Markets	23
i. Relevant Markets	25
ii. CMRS Spectrum Cap	29
iii. Mobile Voice Services	30
iv. Trunked Dispatch Services	31
v. Efficient Spectrum Use	43
2. Analysis of Public Interest Benefits	44
D. Conclusion	49
IV. ORDERING CLAUSES	51

I. INTRODUCTION

1. We have before us two related sets of applications from Geotek Communications, Inc. (“Geotek”), Wilmington Trust Company (“Wilmington”), Hughes Electronics Corporation (“Hughes”) and FCI 900, Inc. (“FCI 900”) seeking: (1) our consent to assign the 900 MHz licenses currently held by affiliates or subsidiaries of Geotek to Wilmington or Hughes, and (2) our consent to assign these licenses from Wilmington or Hughes to FCI 900, a subsidiary of Nextel Communications, Inc. (“Nextel”). Also, as discussed in greater detail below, we have Nextel’s recent request to withdraw certain of the second set of applications, specifically those involving markets covered by a Consent Decree between it and the U.S. Department of Justice (“Nextel Consent Decree”), which prohibits Nextel from acquiring licenses in certain markets until October 2000. In this Order, we (1) grant all of the applications for consent to assign licenses to Wilmington or Hughes; (2) grant the applications for consent further to assign to FCI

900 those licenses in markets not covered by the Nextel Consent Decree; and (3) accept the withdrawal of the applications seeking consent to assign to FCI 900 those licenses in markets covered by the Nextel Consent Decree.

II. BACKGROUND

2. Geotek holds 191 900 MHz Specialized Mobile Radio (“SMR”) licenses, which it obtained in Auction No. 7 in 1996.¹ On June 29, 1998, Geotek filed a voluntary petition for reorganization under Chapter 11, Title 11 of the United States Code.² In formulating a plan of reorganization, Geotek conducted an auction process to determine the party, or parties, to which it would seek to assign its licenses. In early February, 1999, Geotek’s creditors selected Nextel from among the bidders, and, on February 16, 1999, the Bankruptcy Court entered an order authorizing the sale of Geotek’s 900 MHz SMR licenses to Nextel. Geotek, the primary secured creditors (Wilmington and Hughes, collectively the “Creditors”), and Nextel entered into agreements providing, *inter alia*, that, after Commission approval, Geotek would assign the licenses to the Creditors, and the Creditors would then assign the licenses to Nextel.³

3. On March 5, 1999, pursuant to section 310(d) of the Communications Act of 1934, as amended (“the Communications Act”),⁴ Geotek, through various subsidiaries and affiliates, filed applications jointly with the Creditors seeking Commission consent to assign 133 of Geotek’s licenses to Wilmington and fifty-eight licenses to Hughes. On March 9, 1999, the Creditors and FCI 900 filed applications with the Commission seeking consent to assign all of these licenses to FCI 900, a wholly owned subsidiary of Nextel. Nextel operates a digital, wide-area SMR network, providing bundled digital SMR services, including dispatch communications services, interconnected mobile voice service, and short messaging service.⁵ Nextel operates in more than 400 U.S. cities via its 800 MHz licenses; it also holds licenses in the 900 MHz and 220 MHz bands.⁶

¹ See FCC Prepared to Award 900 MHz MTA Licenses Additional Payment Due By July 8, 1996, 11 FCC Rcd 7701 (WTB 1996).

² 11 U.S.C. § 101 *et seq.*

³ On August 27, 1999, subsequent to the filings before us, the Bankruptcy Court approved a plan of liquidation, and the bankruptcy proceeding remains pending.

⁴ 47 U.S.C. § 310(d).

⁵ Amendment to Applications of Hughes Electronics Corporation for Consent to Assign Licenses to FCI 900, Inc., filed March 31, 1999 (“Nextel Public Interest Statement”) at 2, 4.

⁶ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 14 FCC Rcd 10,145, 10,176 ¶ 32 (“*Fourth CMRS Competition Report*”) (citing *Nextel Reports 1998 Results*, News Release, Nextel Communications, Inc., Feb. 23, 1999).

4. On May 28, 1999, by delegated authority,⁷ the Wireless Telecommunications Bureau (“Bureau”) issued a Public Notice to announce that all the applications had been accepted for filing and to establish a pleading cycle to enable interested parties to comment on the proposed transaction.⁸ In response to this Public Notice, five petitions to deny and one set of comments were filed (*see* Appendix A). Three of the parties argue that we should deny the assignment of the licenses from Geotek to the Creditors,⁹ and four of the Petitioners and the one commenting party argue that we should deny the ultimate assignment of the licenses to Nextel.¹⁰

5. The Nextel Consent Decree, a 1995 agreement among Nextel, Motorola, Inc., and the Department of Justice (“DOJ”) settling an antitrust lawsuit, prohibits Nextel from acquiring 900 MHz licenses in fifteen major markets.¹¹ In June 1999, Nextel and DOJ reached a settlement that provided for the Consent Decree to terminate in October 2000. On December 16, 1999, the U.S. District Court for the District of Columbia (“Consent Decree Court”) accepted the settlement; as a result, the Consent Decree remains in effect until October 2000.¹² At this time, therefore, Nextel remains prohibited from holding or acquiring Geotek’s licenses in the specified fifteen markets. On December 17, 1999, Nextel requested that it be permitted to withdraw the applications to assign to FCI 900 the licenses covered by the Nextel Consent Decree.¹³

⁷ 47 C.F.R. § 0.331.

⁸ *See* Geotek Communications Inc. Seeks FCC Consent to Assign 900 MHz SMR Licenses, *Public Notice*, DA 99-1027 (rel. May 28, 1999).

⁹ *See* Petition to Deny, filed June 28, 1999, by Alliance for Radio Competition (“ARC Petition”); Petition to Deny of Southern Communications Services, Inc., filed June 28, 1999 (“Southern Petition”); Petition to Deny, filed June 28, 1999, by Mobex Communications, Inc. (“Mobex Petition”).

¹⁰ *See* ARC Petition; Mobex Petition; Southern Petition; Petition to Deny, filed June 28, 1999, by Chadmoore Wireless Group, Inc.; Comments of Radio Communications Systems, Inc., filed June 28, 1999 (“RCS Comments”) (collectively, “Petitioners”).

¹¹ *See United States v. Motorola, Inc. and Nextel Communications, Inc.*, 1995 WL 866794 *3 (D.D.C. 1995) (“*United States v. Motorola*”). Specifically, the Consent Decree enjoins Nextel, *inter alia*, from holding or acquiring licenses for more than thirty 900 MHz channels in Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Denver, Colorado; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; and Washington, D.C. In addition, Nextel is enjoined from holding or acquiring licenses for more than ten 900 MHz channels in Detroit, Michigan and Seattle, Washington, and from acquiring additional channels in Atlanta, Georgia. Further, Nextel is prohibited from holding or acquiring, either directly or indirectly, more than a five percent ownership interest in any corporation or entity that owns, controls, or manages, directly or indirectly, 900 MHz channels in these cities and from entering into new management agreements for 900 MHz channels in these cities. *Id.*

¹² *United States v. Motorola*, Civ No. 94-2331 (TFH), *Memorializing Order* (D.D.C. Dec. 16, 1999).

¹³ *See* Letter to Terry Fishel, Deputy Chief, Licensing and Technical Analysis Branch, FCC, from James Wheaten, Manager, Compliance, Nextel, dated February 17, 1999.

III. DISCUSSION

6. As explained below, we find that the proposed assignees are fully qualified to hold the licenses as proposed and that the assignment of the licenses to the Creditors and the further assignment to Nextel of those licenses not covered by the Nextel Consent Decree do not pose a risk of harm to competition in U.S. telecommunications markets. In addition, we find that these assignments should result in certain public benefits. Accordingly, we conclude that, pursuant to section 310(d) of the Communications Act, grant of the pending requests for assignment of the licenses to the Creditors and further assignment to FCI 900 of those licenses not covered by the Nextel Consent Decree would serve the public interest. Hence, we deny the petitions and grant the specified applications. Further, we accept the withdrawal by Nextel of the applications to assign the licenses covered by the Nextel Consent Decree from the Creditors to FCI 900.

A. Statutory Authority

7. Section 310(d) of the Communications Act provides, in pertinent part, that “[n]o construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”¹⁴ Section 310(d) also requires the Commission to consider the license transfer or assignment application as if it were filed pursuant to section 308 of the Communications Act, which governs applications for new facilities and for renewal of existing licenses.¹⁵

8. In addition to ensuring that assignor and assignee are duly qualified and comply with the Commission’s rules, we also consider, as part of our examination under the “public interest, convenience, and necessity” standard of section 310(d) of the Communications Act, the effects on competition of a proposed assignment.¹⁶ Under Commission precedent, our public

¹⁴ 47 U.S.C. § 310(d).

¹⁵ Section 310(d) provides that the Commission shall consider any such applications “as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question.” Furthermore, the Commission is expressly barred from considering “whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” 47 U.S.C. § 310(d).

¹⁶ *Applications of Ameritech Corp. and SBC Communications Inc. for Transfer of Control*, CC Docket No. 98-141, FCC 99-279, at ¶¶ 46-49 (rel. Oct. 8, 1999) (“*SBC-Ameritech Order*”); *Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Red 18,025, 18,030-33, ¶¶ 9-12 (1998) (“*WorldCom/MCI Order*”). The Commission also has independent authority under Sections 7 and 11 of the Clayton Act to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly. 15 U.S.C. §§ 18, 21(a). The Bureau, acting pursuant to delegated authority, 47 C.F.R. § 0.331, chooses not to exercise

interest analysis is informed by, rather than limited to, traditional antitrust principles¹⁷ and also encompasses the broad aims of the Communications Act,¹⁸ including evaluating whether any public interest benefits may result from the proposed transaction.¹⁹ Applicants bear the burden of proving that the proposed transaction serves the public interest,²⁰ and we must determine whether they have met this burden.²¹

9. The public interest standard of Section 310(d) involves a balancing process that weighs the potential public interest harms of the proposed transaction against its potential public interest benefits.²² In summary, the Applicants must demonstrate that the transaction will not violate or interfere with the objectives of the Act or Commission rules, and that the overall effect of the assignment will be to advance the public interest.²³

B. Qualifications

10. A number of the Petitioners challenge the basic qualifications of either Geotek, as assignor, or the Creditors or Nextel, as assignees, as reason why we should not consent to these assignments. As a preliminary matter, we note that, in evaluating assignment and transfer applications under section 310(d) of the Communications Act, we do not re-evaluate the qualifications of the assignor or transferor unless issues related to their basic qualifications have

its statutory authority under the Clayton Act in this case because the Commission's jurisdiction under the Communications Act is sufficient to address all questions regarding the competitive effects of the proposed assignments, including the issue of whether the assignment may substantially lessen competition or tend to create a monopoly. See, e.g., *Craig O. McCaw and American Telephone and Telegraph Company*, 9 FCC Rcd 5836 (1994), *recon. denied on other grounds*, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11,786 (1995), *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

¹⁷ *Satellite Business Systems*, 62 F.C.C.2d 997, 1069, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *SBC-Ameritech Order* FCC 99-279 at ¶ 49.

¹⁸ *WorldCom/MCI Order*, 13 FCC Rcd at 18,030 ¶ 9 (citing *Applications of NYNEX Corporation and Bell Atlantic Corporation*, 12 FCC Rcd 19,985, 19,987 ¶ 2 & n.2 (1997) ("Bell Atlantic-NYNEX Order")).

¹⁹ *SBC-Ameritech Order*, FCC 99-279 at ¶ 49; *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20,063 ¶ 158; *Applications of MCI Communications Corporation and British Telecommunications P.L.C.*, 12 FCC Rcd 15,351, 15,367 ¶ 33 (1997) ("BT-MCI Order").

²⁰ *WorldCom/MCI Order*, 13 FCC Rcd at 18,031 ¶ 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant)) and *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, *Initial Decision*, 66 F.C.C.2d 734, 736-37 ¶¶ 2-3 (1975) (burden of proof is on licensee on issue of whether applicants have the requisite qualifications to be or to remain Commission licensees and whether grant of applications would serve public interest, convenience and necessity).

²¹ *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20,001, 20,007, ¶¶ 29, 36; *BT-MCI Order*, 12 FCC Rcd at 15,367, ¶ 33.

²² *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20,063, ¶ 157.

²³ *SBC-Ameritech Order*, FCC 99-279, ¶ 48.

been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.²⁴ By contrast, as a regular part of our public interest analysis, we determine whether the proposed assignee is qualified to hold a Commission license and whether grant of the application would result in the proposed licensee violating any Commission rules.²⁵

1. Qualifications of Geotek to Assign the Licenses to the Creditors

11. In this case, one petitioner, Hugh P. Taylor, claims that Geotek is not qualified to hold Commission licenses, and that we should designate the applications for hearing under Section 309(e) of the Communications Act. As we read Mr. Taylor's arguments, the bases for his claim are his assertions that: (1) Geotek intentionally failed to disclose a certain interest holder in ownership filings with the Commission, specifically FCC Form 430,²⁶ (2) Geotek misrepresented to the Commission the state of its build-out plan and let the construction deadline for its licenses lapse,²⁷ and (3) Geotek's securities filings and press releases contained false information.²⁸

12. In response, Geotek states that, with respect to the ownership filings, Mr. Taylor does not claim any personal knowledge of the events described in the petition or of the motivations of those who prepared and filed the reports.²⁹ Further, Geotek states that it reported its ownership to the best of its knowledge and ability, and, in any event, Geotek could not have known if S-C Rig Investments III, L.P. ("S-C Rig"), a minority shareholder in Geotek, had provided incorrect information regarding ownership in the shareholder.³⁰ Geotek provides an affidavit from S-C Rig explaining that (1) the information provided to Geotek was correct because only one person could have been deemed to have beneficial ownership of the securities of S-C Rig III at the time; and (2) therefore, only one interest holder should have been, and was, disclosed with respect to S-C Rig III's holding in Geotek, and this interest holder was disclosed

²⁴ See *Mobilemedia Corporation et al.*, FCC 99-15 (rel. Feb. 5, 1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964)); see also Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991) ("*Sewell Article*"). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *Id.*

²⁵ See *In re applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, *Memorandum Opinion and Order*, DA 99-1200, 1999 WL 413,237 (rel. June 22, 1999) at ¶¶ 5-9 ("*AirTouch Vodafone Order*").

²⁶ Petition to Deny and/or Designate for Hearing, filed June 28, 1999, by Hugh P. Taylor, at 7 ("Taylor Petition").

²⁷ *Id.* at 23, 36.

²⁸ See, generally, *id.*

²⁹ Opposition to Petition to Deny, filed by Geotek Communications, Inc., at 4 ("Geotek Opposition").

³⁰ *Id.* at 5-6.

in Geotek's ownership filings.³¹

13. With respect to its representations to the Commission regarding its build-out plans and the construction deadline, Geotek states that Mr. Taylor mischaracterizes Geotek's actions because of his misunderstanding of the rules regarding the relationship between Designated Filing Area ("DFA") licenses and Major Trading Area licenses. Geotek responds that the construction deadline for Geotek's MTA licenses has not yet passed,³² and explains that in situations in which existing DFA licensees obtained the corresponding MTA license for the same channel block through auction, the Commission has provided for reduced or delayed regulatory obligations.³³ Specifically, Geotek cites Commission precedent stating that "[e]ven if . . . incumbents have been unable to load their systems because they are limited to operating in DFAs, they now have the ability to overcome this obstacle by obtaining an MTA license, which exempts them from all previously applicable loading requirements."³⁴

14. Regarding the securities filings and press releases, Geotek responds that these issues are not properly before the Commission because they do not pertain to the proposed transactions and, further, are currently the subject of pending, private litigation initiated by Mr. Taylor in Tennessee state court against certain current and former directors and officers of Geotek.³⁵

15. We find that that Mr. Taylor's petition does not justify either denying the applications or designating Geotek's basic qualifications for hearing.³⁶ Mr. Taylor's filings, while voluminous, do not raise a substantial and material question as to the accuracy of Geotek's ownership filings. Geotek, moreover, provides the declaration of an individual with personal knowledge of the matters that Mr. Taylor discusses.³⁷ That declaration provides reasonable and logical explanations for the discrepancies alleged by Mr. Taylor. With respect to the

³¹ *Id.* at Exhibit B (Declaration of Michael C. Neus, Assistant General Counsel of Soros Fund Management LLC) ("Neus Declaration").

³² *Id.* at 8 (citing *Public Notice*, FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses, DA 96-1282 (rel. Aug. 12, 1996)).

³³ Geotek Opposition at 7.

³⁴ *Id.* at 8 (quoting In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Implementation of Section 3(n) and 322 of the Communications Act, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884, ¶ 57 (1995) ("*Second CMRS Report and Order*").

³⁵ Geotek Opposition at 9.

³⁶ See 47 U.S.C. § 309(d); see also *Sewell Article*, 43 Fed. Comm. L.J. at 292.

³⁷ Geotek Opposition at 9 at Neus Declaration.

construction-related claims raised by Mr. Taylor, of the three DFA licenses at issue in this matter, Commission records indicate that two were timely constructed and placed into operation,³⁸ while the third is encompassed within a subsequent MTA license.³⁹ Geotek acted properly when it filed an implementation plan based on the MTA license, rather than the DFA license, and it was entitled to rely on the MTA construction deadline.⁴⁰ Finally, we believe that the securities-related issues raised by Mr. Taylor are not properly before the Commission, and the merits of claims raised in private litigation (to which Geotek is not a party) are not properly included in this proceeding.⁴¹ Therefore, we deny Mr. Taylor's petition.

2. Qualification of the Creditors to Hold the Licenses

16. Three of the Petitioners argue that the Creditors lack the basic qualifications to hold the licenses.⁴² Southern Communications Services, Inc. ("Southern") argues that the Creditors are unqualified because their primary reason for acquiring the licenses is to maximize the return on their collateral, which is irrelevant to our public interest determination under Section 310 of the Act, and not to put the licenses into operation.⁴³ Mobex Communications, Inc. ("Mobex"), the Alliance for Radio Competition ("ARC"), and Southern argue that the Creditors are acting as agents of Nextel in these proposed transactions, which we interpret as an argument that the Creditors are not the real party in interest in the applications.⁴⁴

17. In response, the Creditors state that their desire to maximize the return on their investment and their willingness to assign the licenses to Nextel have no bearing on whether they intend to fulfill their responsibilities as licensees.⁴⁵ The Creditors argue that, to the contrary, their "substantial interest in preserving the value of their collateral enhances their incentive to comply with the obligations imposed on Commission licensees, and that they have already begun

³⁸ Stations WNPS264 and WNM0982 were constructed and placed into operation by June 27, 1997, within the four-year period granted to Geotek (formerly PowerSpectrum, Inc.) by the ruling In the Matter of PowerSpectrum, Inc., Request for Rule Waiver, *Order*, 8 FCC Rcd 4452 (Private Radio Bureau 1993).

³⁹ Station WNJA893 is in a DFA encompassed by MTA license KNNX235. The Bureau granted Geotek a waiver of its three-year filing requirement for its MTA licenses. *See* In the Matter of Geotek Communications, Inc., *Order*, DA 99-1565 (Wireless Telecommunications Bureau rel. Aug. 9, 1999).

⁴⁰ *Second CMRS Report and Order*, 10 FCC Rcd 6884, ¶ 57 (1995).

⁴¹ *See AirTouch Vodafone Order*, 1999 WL 413,237 at ¶ 6.

⁴² ARC Petition at 12; Southern Petition at 15; Reply of Southern Communications Services, Inc. to Oppositions to Petitions to Deny, filed July 30, 1999, at 2-4 ("Southern Reply"); Reply to Oppositions to Petitions to Deny, filed July 30, 1999 by Mobex Communications, Inc., at 13 ("Mobex Reply").

⁴³ Southern Reply at 2-4.

⁴⁴ Mobex Reply at 13; ARC Petition at 12; Southern Petition at 15; Southern Reply at 3.

⁴⁵ Joint Opposition of Hughes Network Systems and Wilmington Trust Company to Petitions to Deny, filed July 15, 1999, at 6 ("Creditors' Opposition").

considering what steps may be necessary to comply with those responsibilities.”⁴⁶ In addition, the Creditors have explained that the particular way in which the proposed assignments are structured is a function of the bankruptcy proceeding, and that the costs of restructuring the transactions and obtaining further bankruptcy approvals are unreasonably high.⁴⁷ Further, whether or not approval is obtained to assign the licenses to Nextel, approving assignment of the licenses to a party other than a party undergoing a bankruptcy reorganization permits the licenses to be put into service sooner.⁴⁸

18. We are not persuaded by the arguments of the Petitioners that the Creditors lack the basic legal, technical, or financial qualifications to hold the licenses. We find that the Creditors’ desire to maximize the return on their investment and their intention to assign the licenses to Nextel are not in and of themselves inconsistent with their ability or intention to fulfill their responsibilities as licensees.⁴⁹ Petitioners cite no precedent to the contrary. That the Creditors do not intend to hold the licenses for the full extent of the build-out phase does not undercut their position, nor does it relieve them of the obligations placed on licensees by the Commission’s rules.⁵⁰ Further, we are cognizant of the difficulties presented by the requirement that Geotek and its creditors develop, obtain confirmation of, and implement a plan of liquidation approved by the Bankruptcy Court, which is necessary to permit the licenses to be put into service. Therefore, we deny the petitions of Mobex, ARC, and Southern with respect to these issues.

⁴⁶ *Id.*

⁴⁷ *Ex Parte* Letter from Veronica M. Ahern, Nixon Peabody LLP, Counsel for Wilmington Trust Company, to Magalie R. Salas, Secretary, Federal Communications Commission, filed Oct. 29, 1999.

⁴⁸ *Id.*

⁴⁹ We note that the vast majority of wireless licensees operate for-profit ventures using their licenses, and maximizing profits and returns are, no doubt, a high-ranking objective of these operators. We do not agree with Southern that consenting to an assignment to the Creditors is tantamount to granting the Creditors an impermissible security interest in the licenses. *See* Southern Reply at 4 (citing *Tak Communications*, 138 B.R. 568 (W.D. Wisc. 1992), *aff’d*, 985 F.2d 916 (7th Cir. 1995)). The Creditors seek consent to become the licensee, which is quite different from seeking an automatic (or near automatic) right to foreclose on the license to satisfy a debt.

⁵⁰ We note that the Creditors have filed a request for waiver of the build-out requirements pertaining to these licenses, seeking to restart the build-out timeline on the date the Commission acts on the proposed assignment of the Licenses from Geotek to the Creditors. *See* Request for Waiver With Respect to Certain 900 MHz MTA-based SMR Licenses Held by Affiliates of Geotek Communications, Inc., Debtor-in-Possession, Its Subsidiaries and Affiliates, filed June 18, 1999, by Wilmington and Hughes. This request was placed on Public Notice on June 30, 1999 and remains pending. *See* Wireless Telecommunications Bureau Seeks Comment On A Request For Waiver Of The Coverage Requirements For 900 MHz SMR Licensees Filed By Geotek Communications, Inc. and Hughes Network Systems, *Public Notice*, 14 FCC Rcd 11,216 (WTB 1999). We will address the Creditors’ request in a subsequent order.

3. Qualifications of Nextel to Hold the Licenses

19. Two Petitioners raise questions regarding Nextel's qualification as a licensee.⁵¹ Mobex and ARC both allege that Nextel may have violated the Nextel Consent Decree not only by failing to divest the requisite 900 MHz licenses but also by acquiring additional licenses in excess of the maximum specified in the Nextel Consent Decree.⁵² Mobex and ARC argue that these alleged violations of the Nextel Consent Decree demonstrate that Nextel does not possess the requisite character to hold Commission licenses, and that, therefore, the applications for assignment of licenses to Nextel should be dismissed.

20. Nextel argues in response that it has been and continues to be in compliance with the Nextel Consent Decree.⁵³ Nextel points out that Mobex and ARC recently made the same allegations before the Consent Decree Court, and DOJ found no basis for investigating these allegations.⁵⁴

21. We do not find that Petitioners' allegations regarding Nextel's conduct under the Nextel Consent Decree provide a basis for denial of the applications. Petitioners' arguments are based on alleged violations of the Nextel Consent Decree, to which the Commission was not a party and which DOJ has responsibility to interpret or enforce.⁵⁵ DOJ was presented with similar allegations by Mobex and ARC and determined that no further action was warranted.⁵⁶ Under these circumstances, we find no basis to conclude that Nextel lacks the requisite character under the Commission's rules to be a Commission licensee, and we deny the petitions of Mobex and ARC on this issue.

⁵¹ ARC Petition at 5-6; Mobex Petition at 5-6; Mobex Reply at 2-5.

⁵² ARC Petition at 5-6; Mobex Petition at 5-6; Mobex Reply at 2-5. Mobex and ARC base their allegations on a comparison between the number of licenses held by Nextel and Motorola at the time of the Nextel Consent Decree and the number of 900 MHz licenses currently held by Nextel, based on the petitioners' review of the Commission's public database. ARC Petition at 5-6; Mobex Petition at 5-6; Mobex Reply at 2-5.

⁵³ Opposition to Petition to Deny, filed July 15, 1999, by Nextel Communications, Inc. at 27 ("Nextel Opposition").

⁵⁴ *Id.*

⁵⁵ In re Application of Motorola SMR, Inc. 900 MHz SMR Authorization New York MTA, *Memorandum Opinion and Order*, DA 97-950, at ¶ 7 (rel. May 7, 1997).

⁵⁶ Response of the United States to Public Comments on the Proposed Modified Consent Decree, *U.S. v. Motorola*, filed Aug. 26, 1999 ("DOJ Response") at 30-34. DOJ found that Mobex's and ARC's allegations reflected a misunderstanding of the scope of the Nextel Consent Decree's restrictions limiting Nextel's 900 MHz holdings. *Id.*

C. Public Interest Impacts**1. Analysis of Potential Public Interest Harms****a. Competitive Assessment – Consent Decree Markets**

22. From a consumer's perspective, the Geotek licenses are not currently being used to provide any service. Geotek has ceased its operations and intends to liquidate. Therefore, the licenses will not be put into service as long as they remain with Geotek. Moreover, the Creditors do not currently offer any telecommunications services for which these licenses could be used, and nothing in the record indicates any potential competitive harms that may result from the Creditors holding the licenses encompassing the Consent Decree markets. Any competitive issues that might arise from future applications to assign these licenses from the Creditors to another party will be addressed in the context of any such future applications.

b. Competitive Assessment – Non-Consent Decree Markets

23. All parties essentially assess the effects of a direct assignment from Geotek to Nextel in the non-Consent Decree markets. We, too, follow this approach. We find that the assignment of licenses will not result in competitive harm in these markets. First, we note that this transaction does not have the negative implications of a horizontal merger. Because Geotek is not providing service that competes with Nextel – or, indeed, any service at all – the transaction will not result in a reduction of existing competition. Consumers will, therefore, have the same access to alternative services and service providers in these markets as they currently have. Second, we believe that there are significant prospects for entry of new services that will compete directly with Nextel's service offerings, thus enhancing future competition in the markets in which Nextel operates. Third, even if this transaction means that the spectrum will not be put to use providing certain kinds of dispatch service, as Petitioners contend, we find that this is not a competitive harm. Our rule affords licensees great flexibility to choose the type of service they will provide on this spectrum, allowing the marketplace to determine its highest and best use. Thus, the effect of this transaction is that currently unused spectrum will be put to its highest valued use.

24. Finally, we note that our approval of this transaction is consistent with the position of DOJ, which did not challenge Nextel's acquisition of SMR licenses held by Motorola in non-Consent Decree cities in 1995, and, similarly, has not challenged Nextel's proposed acquisition of Geotek licenses in the non-Consent Decree markets. Because these markets are generally smaller than the Consent Decree Markets, and, therefore, have fewer potential customers, it is unlikely that this transaction will limit the capacity of Nextel's competitors to meet consumer demand.

i. Relevant Markets

25. The Geotek licenses involve spectrum well suited, given current technology, to the provision of paging, dispatch, mobile voice, mobile data, or combinations of these services. These licenses are not currently being used to provide commercial service in any market. Nextel states that it intends to use the licenses it acquires in the provision of bundled services, including mobile voice telephony, workgroup calling, messaging, and data.⁵⁷

26. Petitioners generally focus on the competitive effects of the acquisition on the trunked dispatch, or simply dispatch, market.⁵⁸ Nextel maintains that “the appropriate market for analyzing the proposed transaction is the Commercial Mobile Radio Service (“CMRS”) marketplace”⁵⁹ but also, for consistency with the Bureau’s analysis in *Pittencrieff*,⁶⁰ evaluates the acquisition’s competitive effects on dispatch and interconnected mobile voice services.⁶¹ We need not address the market definition question in detail because we essentially employ the approach advanced by Petitioners. For analytical convenience, therefore, we will examine the competitive effects of this transaction using the product market definitions that we employed in *Pittencrieff*, which are essentially equivalent to the definitions proposed by Petitioners. In approving Nextel’s 1997 acquisition of Pittencrieff Communications, Inc., an 800 MHz SMR licensee, we defined two relevant product markets: interconnected mobile phone and dispatch.⁶² Herein, we employ these two product markets, although for clarity we alter terminology slightly and label them “mobile voice” and “trunked dispatch.”⁶³

27. While we adopt the *Pittencrieff* product market definitions for convenience,⁶⁴ we

⁵⁷ Nextel Public Interest Statement at 16.

⁵⁸ Response to the Opposition of Nextel Communications, Inc. to Petitions to Deny, filed July 30, 1999, by Alliance for Radio Competition (“ARC Response”), Exhibit 2 (Affidavit of A. Daniel Kelley and Alan J. Boyer Affidavit) at ¶ 14 (“Kelley and Boyer Affidavit”); RCS Comments at 5-6; Southern Petition at 8-10; Mobex Reply at 5-6; ARC Petition at 7.

⁵⁹ Nextel Public Interest Statement at 5.

⁶⁰ Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 13 FCC Rcd 8935 (WTB 1997) (“*Pittencrieff*”).

⁶¹ Nextel Public Interest Statement at 5-6.

⁶² *Pittencrieff*, 13 FCC Rcd at 8946, 8948, 8953, ¶¶ 24, 30, 42-43.

⁶³ We have used the term “mobile voice” to make clear that mobile data services are not included.

⁶⁴ We also determine that for purposes of this proceeding, the relevant geographic markets are primarily local, consistent with the Bureau’s findings in *Pittencrieff* with respect to dispatch services, and with all recent Bureau reviews of mergers with respect to mobile voice services. *See, generally*, In re Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 3844 (WTB 1999); 360° Communications Company and ALLTEL Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 2005 (WTB

also find that the boundaries between various CMRS sectors are fluid. These changes result from the Commission's general policy of allowing flexible use in the CMRS sector, and even more importantly, from the rapid evolution of technology and the wireless marketplace. For example, mobile data services are emerging and are becoming closely integrated with mobile voice and other offerings. Also, services offered by cellular and broadband PCS firms are increasingly competing with services offered by paging and messaging carriers. In addition, not only does Nextel's bundled offering of mobile voice and the Direct Connect[®] service option⁶⁵ straddle the two *Pittencrieff* markets, but the Direct Connect[®] service option itself may be seen as providing more than trunked dispatch. To some degree, it is a substitute for features associated with mobile voice such as speed dialing and conference calling. Thus, we recognize that legitimate questions can be raised about the suitability of the market definitions we found appropriate in *Pittencrieff* three years ago. We are now more prepared to broaden our consideration of the competitive impact of market participants outside of the sharply delineated wireless sectors we have used recently when evaluating proposed transfers and assignments. The convergence of these technologies leads us to believe that consumers may begin to use more of these wireless services interchangeably (and that carriers may increasingly market such services to the same set of consumers).

28. Nevertheless, as noted above, we approve these assignments regardless of the market definition adopted. Moreover, because the licenses at issue here are not now being used to provide service in any telecommunications market, and because they are suitable for the provision of numerous services, our analysis necessarily involves consideration of a wide range of CMRS services and certain Private Mobile Radio Service ("PMRS") services as well.

ii. CMRS Spectrum Cap

29. The Geotek licenses Nextel seeks to acquire would give Nextel an additional attributable interest in spectrum covered by the CMRS spectrum cap⁶⁶ of between 0.5 and 1.75 MHz per market, or between 20 and 70 SMR channels per market.⁶⁷ The proposed acquisition does not violate the general CMRS spectrum cap rule because the only spectrum counted for the purpose of determining compliance with the cap in which Nextel has an attributable interest is SMR spectrum, and holdings of SMR spectrum alone cannot violate the cap. The maximum amount of SMR spectrum counted against the cap is 10 MHz regardless of the amount actually held.⁶⁸

1998).

⁶⁵ Direct Connect[®] provides Nextel customers with a variety of options for push-to-talk communications.

⁶⁶ See 47 C.F.R. § 20.6.

⁶⁷ Kelley and Boyer Affidavit at ¶ 18.

⁶⁸ 47 C.F.R. § 20.6(b).

iii. Mobile Voice Services

30. The acquisition of the Geotek licenses by Nextel will not harm competition and indeed will likely have pro-competitive effects in relevant mobile voice markets. We define this product market as consisting of all commercially available two-way, mobile voice services providing access to the public switched telephone network via terrestrial systems. These services are currently provided by cellular companies, broadband personal communications services (“PCS”) providers, and interconnected, trunked SMR firms.⁶⁹ While the amount of spectrum capacity being acquired by Nextel is small relative to the total amount of spectrum employed in the provision of mobile voice services, and any competitive impact will likely be small, the effect should nevertheless be positive. Moreover, this acquisition does not raise issues regarding concentration in the ownership of spectrum employed in the provision of mobile voice services. Rather, it will increase the amount of capacity held by a firm that currently has significantly less capacity than its chief rivals.⁷⁰ In sum, approval of these applications will further the development of competition in the relevant mobile voice markets.

iv. Trunked Dispatch Services

31. Opponents of the proposed transaction focus their arguments on the alleged effects of the proposed license assignment in trunked dispatch markets. These opponents argue that the trunked dispatch market is already highly concentrated and will become even more dominated by Nextel should the Commission grant assignment of Geotek’s licenses.⁷¹ Several Petitioners assert that Nextel has market power that allows it to unilaterally increase dispatch prices, and that Nextel currently charges the highest rates in the market.⁷² We find that while these markets are concentrated, this transaction is not likely to result in competitive harms because there are other sources of actual and potential competition that will likely constrain Nextel’s ability to set prices or restrict customers’ access to these services.⁷³

⁶⁹ *Pittencrieff*, 13 FCC Rcd at 8954, 8956 ¶¶ 45, 48; see also *Fourth CMRS Competition Report*, 14 FCC Rcd at 10,172-80.

⁷⁰ According to one analyst, Nextel holds at least 11 MHz of spectrum throughout the United States, has 15 MHz in most urban markets, and up to 20 MHz in selected cities. Warburg Dillon Read, *Wireless Securities: Nextel Communications, Inc.* (August 2, 1999) at 10.

⁷¹ Southern Reply at 11; Mobex Petition at 6-8; Mobex Reply at 5-6; ARC Petition at 8-10; ARC Response at 10-13; RCS Comments at 12-15 (RCS’s analysis limited to the Louisville, KY and Lexington, KY markets).

⁷² Mobex Petition at 7; Mobex Reply at 6; ARC Petition at 8-9.

⁷³ DOJ Response at 8-9. We agree with DOJ’s conclusion that concentration in the relevant markets, based on recent marketplace developments, is likely to be mitigated by other significant entry.

a) Market Participants

32. The market for trunked dispatch services includes firms offering on a commercial basis both one-to-one and one-to-many calling services on trunked systems employing either analog or digital network architectures. In *Pittencrieff*, we found that these services were provided primarily by carriers operating at 800 MHz, 900 MHz, and 220 MHz, but also by qualified private land mobile operators.⁷⁴ We now adopt the term “trunked dispatch” for this market. We use the term “traditional dispatch” to refer to non-interconnected, non-CMRS, commercial dispatch services (typically non-trunked, analog systems). We use the term “private dispatch” to refer to in-house systems operated by companies solely to support their own business operations.

b) Market Concentration

33. We concur with DOJ that the relevant trunked dispatch markets are concentrated.⁷⁵ Petitioners’ experts furnish analyses of market concentration using Herfindahl-Hirschman Indices (HHIs) at both the national and local levels, showing very high market concentration.⁷⁶ However, we conclude that Nextel’s acquisition of the Geotek spectrum does not raise market concentration. As we have noted, this transaction is not a horizontal merger but, rather, constitutes an addition of spectrum capacity to the market. Second, not all of the spectrum that Nextel seeks to acquire – which varies between 0.5 MHz and 1.75 MHz per geographic market – should be considered an addition to the trunked dispatch market. Much of this capacity will be used for provision of mobile voice. Thus, we find that ARC’s spectrum-based HHI analysis overstates the increase in concentration. In particular, it overstates the increase in Nextel’s trunked dispatch capacity because the Direct Connect[®] service feature should not be considered exclusively a trunked dispatch product.⁷⁷ Beyond these considerations, there will be no impact on concentration in the short run because no ongoing business in this market is being acquired (and, therefore, properly calculated HHIs based on subscribers, output,

⁷⁴ *Pittencrieff*, 13 FCC Rcd 8948-49, at ¶ 30.

⁷⁵ DOJ Response at 8.

⁷⁶ RCS Comments at 12-15; Mobex Reply at 6; ARC Petition at 8; ARC Response at 10-12. Kelley and Boyer also allege that Nextel’s dominant position in dispatch services may enable Nextel to induce some consumers to buy bundled service in order to get dispatch. Kelley and Boyer Affidavit at ¶¶ 45, 46. We find this implausible. Consumers of trunked dispatch services will have alternatives to the bundled product offered by Nextel. Other providers of trunked dispatch will continue to exist; none is being acquired by Nextel here. These firms generally offer trunked dispatch unbundled with mobile voice, and they can expand this offering if there is demand to justify expansion. Moreover, as we explain below, for at least some users of trunked dispatch service, traditional dispatch or private dispatch will be close substitutes and constitute competitive constraints on the market power of Nextel. *See also* Mobex Reply at 8-9; ARC Response at 8-9.

⁷⁷ *See, generally*, Kelley and Boyer Affidavit. We also believe that petitioners’ HHIs overstate concentration to the extent they are based solely on spectrum holdings in the 220, 800, and 900 MHz bands. *See infra* ¶ 32.

or revenue would be unchanged). In addition, any increase in concentration here is less of a concern than if it resulted from a horizontal merger because the transaction expands market capacity; thus it should also have an output expansion effect.

34. Finally, while we do not find the traditional dispatch and private dispatch sectors to be part of the trunked dispatch market, we nonetheless believe that, for some trunked dispatch consumers, traditional dispatch services (whether CMRS or PMRS) are likely to be a viable competitive alternative. And, for some large, trunked dispatch consumers, the option of owning and operating an in-house radio system will be a competitive alternative. These services, as well as non-voice (data) dispatch systems, constitute alternatives that when viewed collectively help to constrain Nextel's ability to behave anti-competitively in the relevant trunked dispatch markets.

c) Market Entry

35. Moreover, in the relatively near future, we believe that additional market entry is likely to ensure that competitive conditions facing consumers in these markets will improve. We are confident that entry can be relied upon to prevent competitive harm in this case because barriers to entry are low and numerous firms with qualifications and abilities to enter exist. In particular, we find that cellular and broadband PCS firms will have the ability to enter easily because they hold spectrum licenses, have relevant physical assets in place, have expertise in wireless technologies and markets, are ongoing businesses with recognizable brand names, and have ample capital resources. In addition, certain 220 MHz licensees have some of these attributes, and we find they are likely entrants as well.

36. *Cellular/PCS Entry.* We agree with DOJ's conclusion that a number of cellular and PCS firms appear to be positioning price and service plans to compete more closely with Nextel's mobile voice service and Direct Connect[®] feature.⁷⁸ The large PCS and cellular providers, including those managed by the Regional Bell Operating Companies, are well-capitalized companies capable of developing service offerings to compete with Nextel in this market. The first step was the introduction of plans offering discounted billing for group-calling services. In February 1998, Bell Atlantic introduced a mobile-to-mobile calling plan permitting callers to make unlimited one-to-one calls to other Bell Atlantic Mobile subscribers. The service was intended to appeal to mobile workers who communicate frequently with each other over the Bell Atlantic Mobile network.

37. Competition from mobile voice providers has since evolved from discounted billing plans to improved group-calling functionality.⁷⁹ For example, Ericsson's TDMA Pro

⁷⁸ DOJ Response at 9-10.

⁷⁹ DOJ Response at 9-11. DOJ notes that it expects some cellular and PCS carriers to implement such technologies

product overlays dispatch capabilities onto existing mobile voice networks by programming the network's servers and handsets.⁸⁰ Dispatch calls are routed to the server, which, in turn, simultaneously contacts members of predefined dispatch groups, eliminating the sequential calling delays characteristic of discount billing plans. In September 1999, under the Cellular One brand name, SBC launched *Cellular One to One*, a service employing the Ericsson technology enabling subscribers to make conference calls with up to 30 different parties by dialing pre-programmed group numbers. This service has already been rolled out in the metropolitan Chicago area, suggesting that it can also be rolled out elsewhere. We will monitor these developments and amend our conclusions regarding competitive conditions in these markets in future license transfer applications if our expectations for these expanded service offerings and pricing plans are not met.

38. The efforts of cellular and broadband PCS firms to develop group-calling services are just what should be expected from a policy of allowing flexible use of spectrum licenses. If Nextel, or any firm, has identified a profitable niche, other firms will enter that niche to compete away excess profits. Investment and innovation enable telecommunications carriers to upgrade existing technologies or to acquire new ones. In the past, the Commission's service rules, which restricted particular frequency bands to narrowly defined services or even specific customer subsets, acted as a barrier to entry and limited the impact of actual and potential competition from other spectrum bands. The Commission's current policy of relying on flexible use to efficiently direct CMRS spectrum resources to produce public benefits has removed that regulatory impediment to competition.⁸¹

39. *220 MHz Entry.* Spectrum in the 220 MHz band is also available for entry and expansion in dispatch. The auctioning of the 220 MHz Phase II licenses is complete; these licenses will provide 310 channels (155 channel pairs) of new dispatch capacity (1.55 MHz total) in each market, allocated into thirteen frequency blocks and including three unencumbered nationwide licenses. We agree with DOJ's conclusion that entry of competitive dispatch providers in the 220 MHz band likely will occur in the relatively near term.⁸² Petitioners complain that the 220 MHz signal penetrates buildings poorly and attenuates too slowly for urban recycling.⁸³ However, our understanding is that, in general, a lower frequency signal (in

within the next 12-18 months, and expects others to do so over a somewhat longer period of time. *Id.* at 11.

⁸⁰ *Ex Parte* Letter from Lauren H. Kravetz, Commercial Wireless Division, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed Nov. 2, 1999 ("CWD *Ex Parte* Filing") at 1.

⁸¹ See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996).

⁸² DOJ Response at 9, 11-12.

⁸³ Kelley and Boyer Affidavit at ¶ 35; Mobex Petition at 9; Mobex Reply at 11-12.

this case, 220 MHz) actually penetrates buildings slightly better than a higher one (here, 900 MHz) and that, all else being equal, the 220 MHz signal propagates farther as well. As for attenuation, this and other characteristics of the signal depend on circumstances; within line of sight, a higher frequency performs better, while below line of sight a lower frequency is preferable. Finally, Petitioners' arguments neglect other signal strength determinants, namely antenna height and transmitter power.

40. We emphasize that our analysis here is limited to the non-Consent Decree markets. These markets are generally smaller than the Consent Decree markets, which constitute essentially the fifteen largest U.S. metropolitan areas. Thus, the demand for trunked dispatch service should be correspondingly smaller in these markets, and the capacity available from 220 MHz licensees larger relative to that demand. However, we also emphasize that the capacity to be deployed by 220 MHz carriers alone will not be sufficient to prevent competitive harm from arising here. Rather, it is the combined effect of all the current alternatives and likely entrants that forms the basis for our conclusion that no anti-competitive effects should result in any relevant dispatch markets.

41. We disagree with Petitioners' arguments that alternative sources of capacity suitable for dispatch use will be insufficient to meet projected growth in market demand.⁸⁴ Dispatch service providers allege that spectrum suitable for providing dispatch services is congested, and that future growth in demand will outstrip available capacity.⁸⁵ However, evidence on pricing of dispatch service offerings appears inconsistent with claims that capacity is becoming increasingly scarce. According to the American Mobile Telecommunications Association ("AMTA"), the last significant increase for trunked analog dispatch service prices occurred in 1992.⁸⁶ In recent years, dispatch prices for trunked analog service have actually fallen in real terms, from \$15.51 per subscriber unit in 1995 to \$14.91 in 1998. Declining real prices suggest that dispatch market capacity has been outpacing demand. For example, Motorola's iDEN technology, introduced into service over this period by Nextel and Southern, has increased spectrum capacity three- to six-fold compared to analog systems. Ericsson's Enhanced Digital Access System, used by Mobex, has yielded a two-to-four-fold increase in capacity. Narrowband equipment manufactured by SEA and Midland has led to capacity increases five times beyond analog systems.⁸⁷ Thus, while dispatch demand has grown, dispatch supply appears to have been growing even more rapidly. We see no reason to believe that these trends are poised for significant change. We find that additional capacity to meet demand for dispatch services may become available from cellular, PCS, private radio, and other dispatch-

⁸⁴ Kelley and Boyer Affidavit at ¶ 34.

⁸⁵ CWD *Ex Parte* Filing at 2.

⁸⁶ *Id.*

⁸⁷ *The State of SMR and Digital Mobile Radio: 1998*, The Strategis Group, at 109.

suitable spectrum. Hence, we conclude that existing and expected additions to market capacity will be sufficient to meet market demand.

42. *Relative Suitability of SMR Bands.* Finally, we find unconvincing arguments that 900 MHz spectrum is vastly superior to alternative spectrum bands for dispatch provision. First, although 900 MHz spectrum is licensed in wide geographic areas, known as Major Trading Areas, wide-area coverage can be achieved by acquiring more smaller-area licenses, such as 220 MHz and 800 MHz licenses. Some carriers, including Nextel, Southern, and others, have put together broad geographic service areas in just this fashion. Second, while 900 MHz spectrum's 12.5 KHz-wide, ten-channel blocks are large enough to accommodate digital technologies, digital technology is not as critical for the short, push-to-talk dispatch exchanges as it is for mobile voice, which involves longer calls and greater spectrum demands.

v. Efficient Spectrum Use

43. We reject Petitioners' argument that the redeployment of spectrum from traditional dispatch is a competitive harm.⁸⁸ Rather, spectrum assets are exiting traditional dispatch in search of higher returns, and this transaction apparently furthers the redeployment of spectrum to higher valued uses. Nextel plans to re-deploy the Geotek spectrum to the provision of its bundled service offering. Southern and Mobex, two of the larger SMR operators, have themselves expressed a desire to obtain and use the spectrum to provide mobile voice/dispatch service akin to Nextel's.⁸⁹

2. Analysis of Public Interest Benefits

44. We find that this transaction should produce relatively small but clear public benefits. First, assignment of the Consent Decree licenses to the Creditors and of the non-Consent Decree licenses to Nextel will move idle assets into productive use more quickly than would otherwise be possible. Furthermore, this transaction will shift these assets toward their highest valued use, facilitated by the Commission's rules permitting a variety of uses, as well as reflecting Nextel's high bid for the Geotek licenses.⁹⁰

45. With respect to the assignment of the non-Consent Decree licenses to Nextel, Nextel claims that its acquisition of Geotek spectrum will generate numerous other specific public interest benefits. Nextel contends that the transaction will enable it to compete better with cellular and PCS carriers by extending the availability of and lowering prices for its bundled

⁸⁸ RCS Comments at 7-15; Southern Reply at 8-9; Mobex Petition at 6-8; ARC Response at 10-13.

⁸⁹ Mobex Reply at 7; Southern Petition at 4-6.

⁹⁰ See also *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974)(holding that the Commission, in evaluating the public interest of action involving a bankrupt licensee, should consider the effect of its actions on the licensee's innocent creditors).

service offering, as well as encouraging service innovation.⁹¹ It claims the transaction will enhance efficiency by allowing Nextel to assemble fragmented SMR spectrum,⁹² and argues that it will expand geographic coverage, increase network capacity, and enable it to realize cost-economies.⁹³ Petitioners respond by claiming that Nextel's acquisition of these 900 MHz licenses will add little to CMRS competition because the 45 MHz spectrum cap is driving the growth of CMRS competition, not Nextel.⁹⁴

46. We find that there are public interest benefits to this transaction. For example, as stated earlier, this acquisition should have pro-competitive effects in mobile voice markets.⁹⁵ Moreover, because Nextel has a national footprint and is one of a limited number of firms that can provide nationwide service over its own network, it likely can provide a bigger pro-competitive impact in mobile voice markets than other prospective buyers of the Geotek licenses.⁹⁶ In addition, while Nextel will be acquiring a small amount of spectrum in absolute terms, the Geotek licenses would constitute, on average, a roughly 10 percent capacity increase for Nextel in non-Consent Decree markets. This will still leave it well short of the amount its chief rivals hold (typically, 25-30 MHz, and some cellular and PCS carriers control up to the 45 MHz limit (55 MHz in rural areas) permitted under the CMRS spectrum cap rule). Thus, we find it credible that this capacity will enable Nextel to achieve, in some measure, operational economies already enjoyed by its competitors.

47. Petitioners argue that Nextel's premium pricing has exerted little downward pressure on prices for mobile phone service. We disagree, noting in particular Nextel's early introduction of per-second billing, and its elimination of roaming and long distance charges. Moreover, because these services are differentiated, direct price comparisons do not constitute a meaningful basis for assessing the competitive impact of a product offering.

48. Finally, regarding the trunked dispatch market, it is also true that this acquisition should produce public interest benefits by introducing new capacity, which in turn will allow possible price decreases, output increases, or a combination of these effects. These benefits are

⁹¹ Nextel Public Interest Statement at 14-15.

⁹² *Id.* at 14.

⁹³ *Id.* at 15.

⁹⁴ Kelley and Boyer Affidavit at ¶ 17.

⁹⁵ *See, infra*, ¶ 46.

⁹⁶ Nextel's competitive presence has become quite significant, with over 4 million subscribers as of the third quarter of 1999. Nextel is one of only three firms that can offer mobile voice services throughout much of the nation using its own facilities. For business customers in particular, consumers have benefited from the savings that its entry into the mobile voice market has produced through price competition, but its distinctive service offering has also produced significant consumer welfare benefits.

likely to be smaller in the trunked dispatch market, since this market is smaller and the addition to capacity is being acquired by the firm dominating the market. Nonetheless, the effect is positive. Further, arguments that other purchasers of the Geotek licenses might provide even greater public interest benefits are not relevant. Under our statutory framework, we do not consider the relative merits of alternative, hypothetical transactions.⁹⁷

D. Conclusion

49. We find that there is not likely to be any competitive harm from permitting either the assignment of all of the licenses – both Consent Decree and non-Consent Decree – to the Creditors or the further assignment of the non-Consent Decree licenses to a subsidiary of Nextel. We find that the proposed transaction is not likely to cause competitive harm in either mobile voice or dispatch markets. In addition, we find that there should be significant competitive and other public interest benefits, including moving idle assets into productive use. Therefore, on balance, we find that the proposed transaction is in the public interest.

50. Finally, we note that we are not today reaching any conclusions concerning assessments that we may need to make in the future of a proposed transfer or assignment of the Consent Decree market licenses from the Creditors to another party. Our analysis of such a future proposed transaction may differ from that in this Order if we determine that competitive conditions differ in the Consent Decree cities, that competitive conditions generally have changed, or that new evidence compels another result.

IV. ORDERING CLAUSES

51. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310(d), that the Petition to Deny and/or Designate for Hearing filed by Hugh P. Taylor, the Petition to Deny filed by Chadmoore Wireless Group, Inc., the Petition to Deny filed by the Alliance for Radio Competition, the Petition to Deny of Southern Communications Services, Inc., the Petition to Deny filed by Mobex Communications, Inc., and the supporting pleadings of each in this matter ARE DENIED.

52. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the applications referenced above filed by various subsidiaries and affiliates of Geotek Communications, Inc. to assign licenses to Wilmington Trust Company or to Hughes Electronics

⁹⁷ See 47 U.S.C. § 310(d) (“[T]he Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment or disposal of the permit or license to a person other than the proposed transferee or assignee.”)

Corporation in the above-captioned proceeding ARE GRANTED.

53. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that, with the exception of those licenses for markets covered by the Nextel Consent Decree, the applications referenced above for consent to assign certain licenses from Wilmington Trust Company to FCI 900, Inc. ARE GRANTED.

54. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that, with the exception of those licenses for markets covered by the Nextel Consent Decree, the applications referenced above for consent to assign certain licenses from Hughes Electronics Corporation to FCI 900, Inc. ARE GRANTED.

55. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the December 17, 1999, request of Nextel Communications, Inc. to withdraw applications for consent to acquire licenses in markets covered by the Nextel Consent Decree IS GRANTED.

56. This action is taken on delegated authority under section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

APPENDIX A

Parties Filing Petitions to Deny or Comments

Alliance for Radio Competition
Chadmoore Wireless Group, Inc.
Mobex Communications, Inc.
Radio Communications Systems, Inc.
Southern Communications Services, Inc.
Hugh P. Taylor, Esq.

Parties Filing Oppositions

Geotek Communications, Inc.
Nextel Communications, Inc.
Hughes Network Systems and Wilmington Trust Company (jointly)

Parties Filing Replies or Responses

Alliance for Radio Competition
Mobex Communications, Inc.
Southern Communications Services, Inc.
Hugh P. Taylor, Esq.